

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULY JUSTINE SHELBY,

Plaintiff,

-against-

WARDEN J. PETREUCCI,

Defendant.

23-CV-2851 (LTS)

TRANSFER ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is currently incarcerated at the Federal Medical Center, Carswell, located in Fort Worth, Texas, filed this submission, alleging that “Federal Bureau of Prisons staff and Inmates” “Violated Shelby’s Eighth Amendment Rights.”¹ (ECF No. 1 at 1.) For the following reasons, the Court transfers this action under 28 U.S.C. § 1406 to the United States District Court for the Northern District of Texas.

DISCUSSION

Under 28 U.S.C. § 1391(b), a civil action may be brought in

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.

Under Section 1391(c), a “natural person” resides in the district where the person is domiciled, and an “entity with the capacity to sue and be sued” resides in any judicial district

¹ On April 4, 2023, Plaintiff filed this “Federal Tort Claim Notice of Tort, Request to Proceed In Forma Pauperis, And Appointment of Counsel,” in a *habeas* case pending before the Honorable Vernon S. Broderick of this court, who directed the Clerk of Court to open this submission as a new civil action. *See Shelby v. Petrucci*, ECF 1:20-CV-3233, 30 (S.D.N.Y. Apr. 4, 2023).

where it is subject to personal jurisdiction with respect to the civil action in question. *See* 28 U.S.C. § 1391(c)(1), (2).

Plaintiff alleges that her Eighth Amendment rights are being violated at the Federal Medical Center, Carswell, located in Fort Worth (Tarrant County), Texas. She does not plead the residence of any of the individuals alleged to have violated her rights, only asserting that the alleged events giving rise to her claims occurred at Federal Medical Center, Carswell. Because the individuals are employed at Federal Medical Center, Carswell, and the alleged events occurred there, from the face of the complaint, it is clear that venue is not proper in this court under Section 1391(b)(1), (2).

Under 28 U.S.C. § 1406, if a plaintiff files a case in the wrong venue, the Court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). Plaintiff’s claims arose in Fort Worth, Texas, which is in the Northern District of Texas. *See* 28 U.S.C. § 124(a)(2). Accordingly, venue lies in the Northern District of Texas, 28 U.S.C. § 1391(b)(2), and in the interest of justice, the Court transfers this action to the United States District Court for the Northern District of Texas, 28 U.S.C. § 1406(a).

CONCLUSION

The Clerk of Court is directed to transfer this action to the United States District Court for the Northern District of Texas. Whether Plaintiff should be permitted to proceed further without prepayment of fees is a determination to be made by the transferee court.² A summons shall not issue from this Court. This order closes this case.

² Plaintiff did not include a request to proceed *in forma pauperis* and a prisoner authorization with this submission.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 6, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge